

HONORABLE JOHN C. COUGHENOUR
HONORABLE J. RICHARD CREATURA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

STEVEN ZWERIN, On his own behalf and
on Behalf of all others similarly situated,

Plaintiff,

v.

ALM MEDIA HOLDINGS, a Delaware
corporation;

Defendant.

No. 2:21-cv-00780-JCC-JRC
STIPULATION TO DISMISS ALM MEDIA
HOLDINGS WITH PREJUDICE
PURSUANT TO FRCP 41(a)(1)(A)(ii)

PLEASE TAKE NOTICE that the parties, by and through their undersigned counsel, hereby voluntarily dismiss this case and Plaintiff Zwerin's individual claims, with prejudice, against Defendant ALM Media Holdings, pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure.

Plaintiff filed this putative class action on June 10, 2021 on behalf of himself and class members for violations of the Americans with Disabilities Act (ADA) for accommodations of similarly situated individuals with significant hearing loss. Defendant ALM Media Holdings filed their answer on October 8, 2022. The parties have resolved their individual claims.

In *Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989), the Ninth Circuit authorized courts to consider any prejudice that may result to absent members of a putative class action where a dismissal order is entered prior to class certification. *Diaz*

identified the following forms of prejudice: 1) prejudice from class members' possible reliance on the filing of the action if they are likely to know of it either because of publicity or other circumstances; 2) lack of adequate time for class members to file other actions, because of a rapidly approaching statute of limitations; and 3) any settlement or concession of class interests made by the class representative or counsel in order to further their own interests. *Lyons v. Bank of America*, 2012 U.S. Dist. LEXIS 168230, *4 (N.D.Cal. Nov. 27, 2012) citing *Diaz*, 876 F.2d at 1408. No class notice has been provided to the putative class members, and the parties have agreed to dismiss Plaintiff Zwerin's individual claims only with prejudice. Absent putative class members retain the right to bring a separate suit.

DATED: April 18, 2022.

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